

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
ROBERT JONES**DEFENDANTS**  
NEW HANOVER TOWNSHIP(b) County of Residence of First Listed Plaintiff **FLORIDA**  
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant **MONTGOMERY CTY (PA)**  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)  
MARC E. WEINSTEIN WEINSTEIN LAW FIRM, LLC 1210  
NORTHBROOK DRIVE, SUITE 280 TREVOSE, PA 19053  
215-953-5200 meweinstein@comcast.net

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	LABOR	LABOR	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District (specify)    ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**28 USC sec 1332**Brief description of cause:  
**Mandamus action against Pennsylvania Township****VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/21/2015

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

430 Belair Avenue Merritt Island, FL 32953

Address of Plaintiff: \_\_\_\_\_

2943 North Charlotte St. Gilbertsville, PA 19525

Address of Defendant: \_\_\_\_\_

Gilbertsville, PA (Montgomery County)

Place of Accident, Incident or Transaction: \_\_\_\_\_

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐ No ☒

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☒ All other Diversity Cases

(Please specify) Mandamus action under PA law

### ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Marc E. Weinstein, counsel of record do hereby certify:

X Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

X Relief other than monetary damages is sought.

DATE: January 21, 2015

Marc E. Weinstein

Attorney-at-Law

79474

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: January 21, 2015

Marc E. Weinstein

79474

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

ROBERT JONES	:	CIVIL ACTION
	:	
v.	:	
	:	
NEW HANOVER TOWNSHIP	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (XXXX)

January 21, 2015

Marc E. Weinstein

  
 Plaintiff

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**Date**

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**Attorney-at-law**

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**Attorney for**

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215-953-5200

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215-953-5214

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meweinstein@comcast.net

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**Telephone**

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**FAX Number**

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**E-Mail Address**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**ROBERT JONES**  
430 Belair Avenue  
Merritt Island, FL 32953

Plaintiff,

v.

**NEW HANOVER TOWNSHIP**  
2943 North Charlotte St.  
Gilbertsville, PA 19525

Defendant.

CIVIL ACTION

No. \_\_\_\_\_

**CIVIL ACTION COMPLAINT**

Plaintiff Robert Jones brings this case in mandamus against his former employer, Defendant New Hanover Township:

**I. Introduction**

Plaintiff served as a police officer and corporal for Defendant. He did so with distinction for approximately thirteen (13) years. After suffering a torn rotator cuff and labrum in January 2014 while on the job, Plaintiff and Defendant agreed to conclude their employment relationship in or about July 2014. Since then, Defendant - shamefully - refuses to provide Plaintiff with his disability pension that he earned and with which he is vested. And so the instant case, arising under Pennsylvania law and initiated in federal court by virtue of this Court's diversity jurisdiction.

## **II. Jurisdiction and Venue**

2. The instant action is initiated pursuant to the laws of the Commonwealth of Pennsylvania. The United States District Court for the Eastern District of Pennsylvania may properly maintain personal jurisdiction over Defendant because Defendant's contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendant to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in Int'l Shoe Co. v. Washington, 326 U.S. 310 (1945) and its progeny.

3. The United States District Court for the Eastern District of Pennsylvania may properly maintain original subject matter jurisdiction over the instant action pursuant to 28 U.S.C. § 1332 as the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest or costs and the parties are citizens of different States.

4. Venue is properly laid in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district.

## **III. Parties**

5. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

6. Plaintiff is an adult individual and citizen of the State of Florida. He was formerly a full-time law enforcement officer with Defendant.

7. Defendant is a township in Montgomery County, PA. It is classified as a second-class

township under Pennsylvania law.

**IV. Facts Upon Which Plaintiff Relies for the Relief Sought**<sup>1</sup>

8. Plaintiff was hired by Defendant as a police officer beginning in or about February 2001. He was later promoted to corporal.

9. Pursuant to Act 600<sup>2</sup>, Defendant has established a New Hanover Township Police Pension Plan (“the Plan”). See Ordinance No. 06-05 (attached hereto as Ex. 1).

10. Plaintiff is a vested member of the Plan.

11. Plaintiff is eligible for a monthly disability pension benefit under Section 7 of the Plan, “Service-Related Total and Permanent Disability” because he sustained a shoulder injury in the course of duty which precludes him from being a police officer again. The injury occurred in or about January 2014. Plaintiff suffered a torn labrum and rotator cuff while carrying a drug overdose patient.

**V. The Act or Duty the Defendant Is Required To Perform and the Refusal to Perform It**

12. Since the time Plaintiff’s employment concluded, Plaintiff has made regular and repeated efforts to apply for and secure his monthly disability pension benefit, per Section 7 of the Plan.

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<sup>1</sup> The Commonwealth Court of Pennsylvania has explained that mandamus is an action at law, and particular facts must be pleaded. See Burns v. Board of Dirs., 748 A.2d 1263 (Pa. Cmwlth. 2000).

<sup>2</sup> See 53 P.S. §§ 767 -778, the Police Pension Act (Act of May 29, 1956, P.L. (1955) 1804, as amended). This law is commonly known as “Act 600”.

13. Defendant, however, refuses provide the necessary information and/or papers for Plaintiff to apply for his disability pension, and/or otherwise explain what information is needed and why. Plaintiff's requests for Plan documents such as plan descriptions and annual statements have been ignored.

14. Despite repeated requests, Defendant continues to refuse to cooperate with Plaintiff's application for his monthly disability pension benefit, and continues to deny paying Plaintiff said benefit.<sup>3</sup>

#### **VI. Interest of Plaintiff in the Result**

15. Plaintiff has an obvious and direct interest in his right to apply for and receive his monthly disability pension benefit.

#### **VII. Damages and the Want of Any Other Adequate Remedy at Law**

16. Each month Plaintiff, per Section 7 of the Plan, is being denied 50% of his approximate \$7,000 final monthly salary.

17. Plaintiff has no other adequate remedy at law to compel Defendant to process and approve his monthly disability pension benefit.

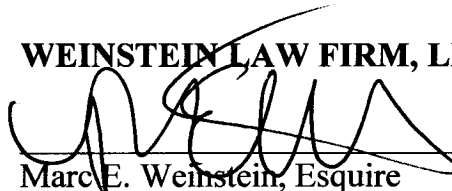
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<sup>3</sup> The Auditor General of Pennsylvania, in an August 2013 compliance audit, determined that Defendant had failed to properly fund the Plan in 2011 and 2012. See Compliance Audit Report (<http://www.auditorgen.state.pa.us/Media/Default/Reports/munNewHanoverTwpPPP080813.pdf>) (last visited 1/20/15). This finding only fortifies Plaintiff's concerns that Defendant is intentionally delaying and withholding the monthly pension benefit to which he is entitled.

**WHEREFORE**, Plaintiff respectfully prays that this Honorable Court order Defendant to provide Plaintiff with his monthly disability pension benefit, retroactively from the date of his separation from employment, along with costs and other appropriate, authorized relief.

**WEINSTEIN LAW FIRM, LLC**

By:



Marc E. Weinstein, Esquire  
One Northbrook Corporate Center  
1210 Northbrook Drive, Suite 280  
Trevose, PA 19053  
215.953.5200  
meweinstein@comcast.net  
Counsel to Plaintiff

Dated: January 21, 2015